

RECEIVED

DOCKET FILE COPY ORIGINAL

JUL 31 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket #96-98
~~CONFIDENTIAL~~

In the Matter of)

ALTS Request for Clarification Concerning)
Reciprocal Compensation Obligation)

CCB/CPD 97-30

REPLY COMMENTS OF COMPUSERVE INCORPORATED

CompuServe Incorporated, by its attorneys and in response to the Commission's Public Notice, DA 97-1399, released July 2, 1997,^{1/} hereby submits these reply comments in the above-referenced proceeding. In its initial comments, CompuServe supported grant of ALTS' request for a ruling that the ILECs are required to continue to pay reciprocal compensation for the delivery of ISP calls. CompuServe's position was premised on its belief that "the real issue is not the jurisdictional nature of the ISP traffic, but rather how the Commission intended in the Local Competition Order for the traffic to be handled for compensation purposes."^{2/}

Having reviewed the initial comments, CompuServe remains of the view that the real issue in this proceeding is exactly as stated above. There is much discussion in the initial comments by parties on both sides of the ALTS petition concerning the jurisdictional nature of

^{1/} By an order adopted July 22, 1997, the Common Carrier Bureau extended the date for filing reply comments to July 31, 1997. DA No. 97-1543

^{2/} CompuServe Comments July 17, 1997, at 4.

CompuServe Incorporated
CCB/CPD 97-30
Reply Comments-July 31, 1997

No. of Copies rec'd 2
List A B C D E

an ISP (or as CompuServe prefers, an ESP) call. But the fact of the matter is that neither the Commission's rule itself (Section 51.701(a)), nor the Commission's opinion appear to make the compensation obligation turn on a jurisdictional determination. Rather, the intent of the Commission appears to be for the compensation obligation to turn on whether the transported call is one that is treated for purposes of the Commission's access charge regime as being subject to carrier access charges or not.^{3/}

The principal contention of the local exchange carriers who argue that the ALTS request should be denied is that almost all ISP calls are jurisdictionally interstate, or at least that it is impossible to separate interstate and intrastate calls and, therefore, all ISP traffic must be considered jurisdictionally interstate.^{4/} CompuServe stated in its initial comments that "under well-established precedent the great preponderance of this information services traffic is jurisdictionally interstate as a matter of law."^{5/} But CompuServe's agreement with the ILECs on this point -- and it must be noted that the ILECs position on this jurisdictional issue has not always been consistent in the past -- may be of consequence in other proceedings, but not here. This is because, as Sprint points out, "[a]lthough ISP calls may be jurisdictionally interstate, they have always been treated differently than interexchange voice traffic."^{6/}

^{3/} CompuServe Comments, at 4-5.

^{4/} See, e.g., Ameritech Comments, July 17, 1997, at 10-14; United States Telephone Association, July 17, 1997, 3-6; Southern New England Telephone Company, July 17, 1997, at 4-5.

^{5/} CompuServe Comments, at 4.

^{6/} Sprint Comments, at 2.

The ILECs appear to be motivated by their claim that the current access charge treatment of ISPs is unwise. For example, Ameritech states that Internet access is currently priced "in an inefficient manner."^{7/} CompuServe does not necessarily agree with Ameritech's view of the Commission's current ISP access charge regime, but, in any event, the appropriate proceeding for that debate is the Access Charge Reform NOI, where the issues are being joined. Until the Commission reaches some conclusions in that proceeding relating to the issues surrounding information services usage of the public network, it should not allow the ILECs to self-effectuate a change in the Commission's current policy that ISPs are treated like other "end users."^{8/}

Finally, CompuServe points out that many others support CompuServe's view, expressed in its initial comments, that a denial of ALTS' request would constitute a setback for the development of local competition. The ILECs are now competitors of CompuServe's in the ISP business, yet CompuServe presently remains heavily dependent upon the ILECs for local

^{7/} Ameritech Comments, at 19.

^{8/} As CompuServe has done many times in the past, Cox points out that, at present, there is no practical way to differentiate ISP calls from other types of local calls. Cox states that: "[T]here is no way to tell if a particular number assigned to an Internet service provider is used for customer service, for ordering Internet access or for access to the Internet. . . . Thus, even if the Commission were to agree that Internet traffic should not be subject to compensation obligations, it would have to recognize that there is no way to make the determinations necessary to exclude that traffic from compensation determinations." Cox Communications, Inc. Comments, July 17, 1997, at 11. Thus, in the Access Charge Reform NOI, the Commission is seeking comment on "jurisdictional, metering, and billing questions, given the difficulty of applying jurisdictional divisions or time-sensitive rates to packet-switched networks such as the Internet." Notice of Inquiry on Implications on Information Service and Internet Usage, CC Docket No. 96-263, FCC 96-488, released, December 24, 1996, at para. 315.

services.^{9/} Ameritech itself acknowledges that presently ILECs “remain the predominant providers of Internet Access Service”^{10/} If the CLECs are not entitled to receive any compensation for carrying ISP calls, the CLECs will not seek to become alternative competitors for ISP business, and the current situation will not quickly change.^{11/} As AT&T states, “[a]llowing ILECs to refuse compensation to interconnecting carriers with whom they compete for ISP traffic would plainly discriminate against those competitors to the benefit of the ILECs’ own ISP offerings.”^{12/}

It is clear from the widespread support the ALTS petition received from new entrants and potential new competitors that the Commission’s action on the ALTS request likely will have a significant impact on the status of the development of competition in the local exchange marketplace. CompuServe believes that a grant of the ALTS request not only would be consistent with the Commission’s ruling in the Local Competition Order, but also would be an important element of the Commission’s program to try and create conditions which will allow local exchange competition to emerge.

^{9/} CompuServe Comments, at 2.

^{10/} Ameritech Comments, at 19.

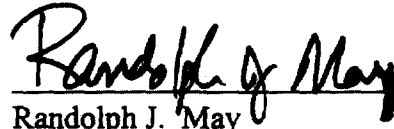
^{11/} See Cox Communications, Inc., at 7.

^{12/} AT&T Comments, July 17, 1997, at 4.

For the reasons stated above, and in CompuServe's initial comments submitted on July 17, 1997, CompuServe urges the Commission to grant the ALTS request.

Respectfully submitted,

COMPUSERVE INCORPORATED

A handwritten signature in cursive script, reading "Randolph J. May", is written over a horizontal line.

Randolph J. May
SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

July 31, 1997

CERTIFICATE OF SERVICE

I, Teresa Ann Pumphrey, hereby certify that a copy of the foregoing **Reply Comments of CompuServe Incorporated**, was served by first-class mail, postage prepaid and by hand were indicated, this 31st day of July, 1997, on the following persons:

Hon. Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Hon. Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

A. Richard Metzger, Jr.
Deputy Bureau Chief
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 500
Washington, D.C. 20554

Elliot Maxwell
Deputy Chief, OPP
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 822
Washington, D.C.

Hon. James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Hon. Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

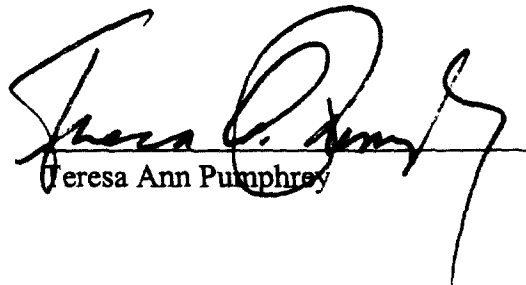
(By Hand Delivery Only)
Wanda Harris
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

(By Hand Delivery Only)
James D. Schlichting
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 518
Washington, D.C. 20554

Kevin Werbach
Office of Plans and Policy
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 822
Washington, D.C.

Richard J. Metzger
General Counsel
ALTS
1200 19th Street, N.W.
Suite 560
Washington, D.C. 20036

(By Hand Delivery Only)
International Transcription Service
Suite 140
2100 M Street, N.W.
Washington, D.C. 20554



Teresa Ann Pumphrey